

REMARKS

In the outstanding Office Action mailed November 28, 2007, the Examiner rejected claims 20-26 and 51 under 35 USC 112(2) as being indefinite. In addition, the Examiner rejected claims 1-2, 8, 10, 12-13, 15-18 and 50-51 under 35 USC 102(e) as being anticipated by USP 6,615,428 to Pattee. The Examiner further rejected claims 3-7 and 9 under 35 USC 103 as being obvious over Pattee, and claims 11 and 14 under 35 USC 103 as being obvious over Pattee in view of USP 6,736,469 to Long.

Applicants note that the Examiner has not rejected or otherwise objected to claim 19. Accordingly, Applicants have rewritten claim 19 in independent form and respectfully submit that claim 19 is in condition for allowance.

Applicants also note that the Examiner has not rejected claims 20-26 as being unpatentable under 35 USC 102 or 103. Rather, those claims have been rejected only under 35 USC 112(2). Applicants have rewritten claims 20 and 23 in independent form, and submit that the rejections under 35 USC 112(2) should be withdrawn for the reasons below. Accordingly, claims 20-26 also are in condition for allowance.

Finally, Applicants submit that the remaining pending claims also are allowable for at least the following reasons.

Remarks About 35 USC 112(2) Rejections

As noted above, the Examiner has rejected claims 20-26 and 51 under 35 USC 112(2) as being indefinite. Specifically, the Examiner has asserted that it is not clearly understood (1) “how” in claim 20 the monitor support “compris[es] at least one track . . . and a guide,” with the monitor support being pivotally connected to the guide, (2) “how” in claim 23 the monitor support is supported by a four-bar linkage, or (3) “how” in claim 51 the worksurface is further moveable in a vertical direction without a base or a support (Office Action at 2-3).

As a threshold matter, Applicants note that the Examiner has raised the rejection under 35 USC 112(2) in the outstanding Office Action for the first time,

notwithstanding that claims 20-26 have been pending in their current form since the filing of this application and have undergone examination in numerous previous Office Actions without these rejections being raised. In addition, the Examiner's stated reasons for indefiniteness do not seem to take issue with the *language of the claims*, which is the proper analysis under 35 USC 112(2), but rather sets forth a stated lack of understanding about "how" the claimed invention works, which is more appropriately related to enablement (MPEP 2164). In either case, the requirements of 35 USC 112 have been met and the Examiner's rejections should be withdrawn.

The examiner's focus during examination of claims for compliance with the requirement for definiteness of 35 USC 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available.

When the examiner is satisfied that patentable subject matter is disclosed, and it is apparent to the examiner that the claims are directed to such patentable subject matter, he or she should allow claims which define the patentable subject matter with a *reasonable* degree of particularity and distinctness.

The essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity.

In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent. See, e.g., *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000). See also *In re Larsen*, No. 01-1092 (Fed. Cir. May 9, 2001) (unpublished).

MPEP 2173.02

In essence, if the language of the claim is such that a person of ordinary skill in the art could not interpret the metes and bounds of the claim so as to understand how to avoid infringement, a rejection of the claim under 35 U.S.C. 112, second paragraph, would be appropriate. *See MPEP 2173.02; Morton Int'l, Inc. v. Cardinal Chem. Co.*, 5 F.3d 1464, 1470, 28 USPQ2d 1190, 1195 (Fed. Cir. 1993); MPEP 2173.02. Clearly that threshold has not been met here.

First, claim 20 recites that the monitor support “defines a support plane,” and that the computer workstation “further compris[es] at least one track oriented non-parallel to said support plane, and a guide moveably mounted on said track, wherein said monitor support is pivotally connected to said guide.” Applicants respectfully submit that this language is clear and definite – the workstation has a track, a guide is moveably mounted on the track and the monitor support is pivotally connected to the guide. Applicants do not understand what aspect of this language is not clear or definite.

As set forth above, Applicants also submit that the outstanding rejection should not be confused for whether the claims are enabled (i.e., “how” to make and use the invention (MPEP 2164)), or whether there is written description support for the language under 35 USC 112(1), both of which are clearly satisfied. At the outset, Applicants note that claims 20-26 are in the form as originally filed in this application. In addition, the Specification clearly discloses, as shown in FIGS. 16 and 17, that at least one of a first pair of tracks 400 and a second pair of tracks 420 are “non-parallel to the plane defined by the support surface of the monitor support” (Specification at 10, lines 26-30). In addition, guides 402 are “moveably connected to the tracks” (Specification at 10, lines 20-21). Finally, “the monitor support 408 includes a plurality of brackets . . . that are pivotally connected to the corresponding ones of the guides 402” (Specification at 11, lines 5-7). Accordingly, the Specification provides ample support for how to make and use the claimed invention.

Of course, the claims should not be limited to the specific embodiments referred to herein.

With respect to claim 23, Applicants again respectfully submit that the claim language is clear and definite. Applicants simply do not understand how the recitation of “said monitor support [being] supported by a four bar linkage” is not clear and definite. Again, if the Examiner is implying a lack of enablement or written description, Applicants note that this language was recited in the original application, and is further supported by the Specification, which discloses in FIGS. 18-20 that the “monitor support 408 is supported by a pair of four bar linkages 428, with the monitor support 408 defining one bar, a base 436 defining a second bar and a pair of links 343, 438 connecting the first and second bars and defining the third and fourth bars respectively” (Specification at 13, lines 20-23). Again, the claims should not be limited to the exemplary embodiments referred to herein.

With respect to claim 51, Applicants respectfully submit that the claim language is clear and definite – simply put, the “worksurface is further moveable in a vertical direction.” Again, if the Examiner is implying a lack of enablement or written description, Applicants note that this language is amply supported by the Specification, which discloses various embodiments in which the monitor support is moveable in a “vertical” direction (*see, e.g.* Specification at 12, line 29 to 13, line 19; at 14, lines 22-25; at 15, lines 11-13). Again, the claims should not be limited to the exemplary embodiments referred to herein.

For all of these reasons, Applicants respectfully submit that claims 20-26 and 51 are clear and definite and the Examiner’s rejections should be withdrawn.

Remarks About 35 USC 102(e) Rejections

The Examiner has rejected independent claims 1 and 50 as being anticipated by U.S. Patent No. 6,615,428 to Pattee. Applicants have amended claims 1 and 50 to recite that the “worksurface has a *front leading edge*,” and further that the “monitor support is *positioned rearwardly of said front leading edge* of said worksurface as

said worksurface is moved between said first and second worksurface positions.” Support for this amendment is found throughout the specification, including for example and without limitation, FIGS. 4, 8, 12, 13, 14, 15, 18 and 20 and the Specification at 8, lines 1-27. In this way, the worksurface, which can be configured for example to support a keyboard, is maintained closer to the user than the monitor support as the worksurface and monitor support are moved fore-and-aft, i.e., toward and away from the user (*id.* (“This differential movement maintains the proper position of a monitor 38 situated on the monitor support 22 and a keyboard 36 situated on the moveable worksurface relative to the eyes and hands of the user respectively as the user tilts rearwardly in a chair”); *see also*, Specification at 5, lines 25-28).

In contrast, Pattee discloses an opposite configuration – the first stage 110 (applied as the monitor support by the Examiner (Office Action at 4)) is always positioned *forwardly* of the leading front edge of the second stage 120 (applied as the worksurface by the Examiner (Office Action at 4)), not rearwardly thereof as now recited in claims 1 and 50. In particular, the first stage 110 of Pattee includes a table top 115 that supports a patient as the patient is moved relative to an imaging device (Pattee at Col. 1, line 6 to Col. 2, line 21; Col. 2, lines 47-52; Col. 4, lines 23-29). As plainly shown in FIGS. 1, 3, 6 and 7, the front leading edge of the second stage 120 (see front edge of slide plate 122) is always positioned *rearwardly* of the first stage/table top 110, 115 so as to maximize the extension of the first stage in the imaging system (Pattee at Col. 4, lines 23-65).

As such, there also is no suggestion, motivation, or any reason to try and move the table top 115 of Pattee so that it does *not* extend beyond the second stage 120. Indeed, that would reduce the amount of extension relative to the imaging device and render the table of Pattee inoperative for its intended purpose.

Applicants also submit that the second stage 120 cannot be applied as the monitor support of claims 1 and 50, with the first stage 110 applied as the worksurface, since claims 1 and 50 recite that the monitor support moves a *greater*

distance than the worksurface. As noted by the Examiner, the first stage 110 with its tabletop 115 moves a greater distance than the second stage 120 (Office Action at 4).

For all of these reasons, claims 1-18 and 50-51 are patentable over Pattee and notice to that effect is earnestly solicited.

Conclusion

Any questions about this Amendment should be directed to the undersigned attorney at (312) 321-4713. Applicants have authorized the Director to charge any additional claims fees to Deposit Account No. 23-1925.

Respectfully Submitted,



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By:

Andrew D. Stover
Reg. No. 38,629
Attorney for Applicants

BRINKS HOFER GILSON & LIONE LTD.
Post Office Box 10395
Chicago, Illinois 60610
(312) 321-4200